

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**April 11, 2005**

**IN RE:**

**JOINT APPLICATION OF GE BUSINESS PRODUCTIVITY  
SOLUTIONS, INC. AND BUSINESS PRODUCTIVITY  
SOLUTIONS, INC. FOR EXPEDITED APPROVAL OF  
(I) THE TRANSFER OF ASSETS, INCLUDING THE  
CUSTOMER BASE, OF GE BUSINESS PRODUCTIVITY  
SOLUTIONS, INC. TO BUSINESS PRODUCTIVITY  
SOLUTIONS, INC. ; (II) THE TRANSFER OF GE  
BUSINESS PRODUCTIVITY SOLUTIONS, INC.'S  
OPERATING AUTHORITY IN TENNESSEE TO BUSINESS  
PRODUCTIVITY SOLUTIONS, INC. ; AND (III) GE  
BUSINESS PRODUCTIVITY SOLUTIONS, INC.'S  
DISCONTINUANCE OF SERVICE IN TENNESSEE**

**DOCKET NO.  
04-00370**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on December 13, 2004 for consideration of the *Application and Request for Expedited Treatment* ("Application") filed jointly by GE Business Productivity Solutions, Inc. ("GEBPS") and Business Productivity Solutions, Inc. ("BPS") (together the "Parties"). The Parties sought TRA approval, pursuant to the provisions of Tenn. Code Ann. § 65-4-113 (2004) and the Rules of the TRA, for the transfer of authority to provide telecommunications services.

**Statutory and Regulatory Framework**

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services (also known as a "certificate of public convenience

and necessity” or “CCN”). Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer.

Further, when a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers’ local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4- 2-.56(2)(d)(2) shall inform the customer of this provision.

## **Background**

By an Order dated October 13, 1995 in TRA Docket No. 95-03180, GEBPS, whose ultimate parent company is General Electric Company, received its CCN to provide resold long distance service in Tennessee. GEBPS later received authority to provide resold local exchange services on October 15, 1996 in Docket No. 96-01430.

BPS is a newly formed Minnesota company, and it currently is not authorized to provide telecommunications services in Tennessee. BPS is a wholly owned subsidiary of Eschelon Operating Company ("OPCO") and OPCO is a wholly owned subsidiary of Eschelon Telecom, Inc. (together with its subsidiaries "ETI"), which, along with its subsidiaries, provides local and long distance facilities-based service in seven states and has 38,000 customers.

## **The Application**

In the *Application*, which was filed with the TRA on October 21, 2004, GEBPS and BPS jointly requested approval for a transfer of authority transaction. GEBPS plans to exit the telecommunications business in Tennessee as well as in other states it currently serves. In association with the proposed transaction, all of GEBPS's assets, as well as its CCN and customers, will be transferred to ETI. ETI will then immediately transfer the assets and customers to BPS. The Parties have also requested that GEBPS be allowed to discontinue service in Tennessee upon completion of the transaction and that GEBPS's tariff be adopted by BPS effective as of December 31, 2004.

According to the *Application*, this transaction will not adversely impact GEBPS customers, and they will not experience any loss or impairment of service. The Petitioners maintain that customers will continue to receive their existing services at the same rates, terms and conditions and any future changes in the rates, terms and conditions of service will be made consistent with TRA requirements. On October 28, 2004, the Parties sent GEBPS customers a notification letter,

informing the customers of the proposed transfer and outlining its expected impact on the customers' rates and service. The Parties attached the proposed letter as Exhibit C to the *Application*.

To support approval of the *Application*, the Parties assert that BPS has the managerial, technical, and financial resources to assume the obligations of GEBPS as a certificated telecommunications provider in Tennessee. According to the *Application*, ETI is a private company but due to recent debt issuance, it has public reporting responsibilities. According to recent filings with the U.S. Securities and Exchange Commission ("SEC"), ETI has access to the financing and capital necessary to conduct its telecommunications operations and to fulfill any obligations it may undertake with respect to the operations and maintenance of its services. In addition, ETI has an experienced management team with more than 100 years of combined telecommunications experience. The transaction will increase competition in the Tennessee telecommunications market because ETI has a strong family of companies, all of which are focused exclusively on telecommunications services.

#### **December 13, 2004 Authority Conference**

At the December 13, 2004 Authority Conference, the Directors voted unanimously to approve the *Application*. The Parties have complied with the requirements of Tenn. Code Ann. § 65-4-113 (2004) and the change will have no detrimental effect on the customers or public welfare. The Directors noted that the customer notification letter did not meet the requirements of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) but was in substantial compliance with the rule. The Directors voted unanimously to waive the requirements of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) and approve the letter as filed.

#### **IT IS THEREFORE ORDERED THAT:**

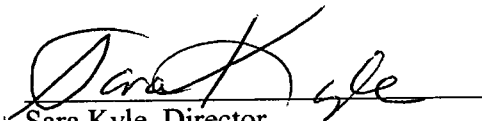
1. The *Application* of the Petitioners is approved.
2. The proposed transfer of authority as described in the *Application* and discussed

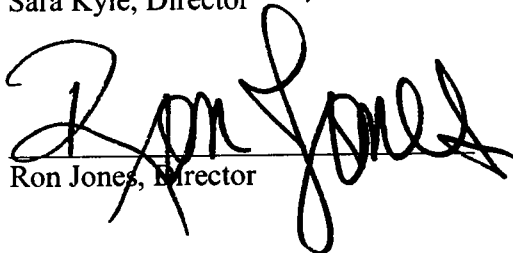
herein is approved, including the transfer of the CCN and customer base from GEBPS to BPS.

3. GE Business Productivity Solutions, Inc.'s tariff is adopted by Business Productivity Solutions, Inc. effective as of December 31, 2004

5. The requirements of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) are waived and the customer notification letter is approved.

  
Deborah Taylor Tate, Director

  
Sara Kyle, Director

  
Ron Jones, Director